IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6597 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI PUNJABHAI TAMAYACHE CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6597 of 2002

MR MR PRAJAPATI for Petitioner No. 1

Mr.V.M.Pancholi, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 28-4-2002 passed against him by the Police Commissioner, Ahmedabad City, whereby the petitioner has been detained under

sub-section (2) of Section 3 of the Prevention of Anti Social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that two criminal cases are pending against the petitioner. The first case is filed under Sections 325,504. and 114 of the IPC read with Sec.135(1) of the Bombay Police Act. The second case is filed under Secs.143, 147, 148,149, 436, 437 read with Sec.135(1) of the Bombay Police Act. It is alleged against the petitioner that he is a headstrong person and he has tried to damage certain properties of other communities and that he is a communal minded person. It is also alleged against the petitioner that statements of two witnesses have been recorded who have deposed against the petitioner in respect to the antisocial activities of the petitioner. The detaining authority having been satisfied that the petitioner has indulged into anti-social activities came to the conclusion that the petitioner is a "dangerous person" within the meaning of the relevant section, and the petitioner is accordingly detained under "PASA".

The petitioner has challenged the aforesaid detention order on various grounds. The main ground canvassed by the petitioner at the time of hearing of the petition is that the detention order came to be passed forthwith in a mechanical manner. According to him, the Sponsoring Authority after recording the statements of two witnesses on 26th April, 2002 forwarded the same to the detaining authority on 27th April,2002 and on the very next day i.e. on 28th April,2002 the detention order was passed. Looking to the time gap, it is difficult to believe that the detaining authority has gone through the bulky record of papers within a day. Not only that some of the statements annexed with the order at pages 192 and 193 are absolutely illegible. So far as the criminal cases are concerned, the petitioner came to be released on bail by the competent authority.

Under the aforesaid circumstances, it is contended by the learned Counsel for the petitioner that the impugned order of detention suffers from the vice of non application of mind on the part of the detaining authority as looking to the fact that the detention order is passed on the very next day, the detaining authority has not properly appreciated the material available on record.

5. At this stage, reference is required to be made to the decision of this Court in the case of Ranubhai

Bhikhabhai Bharwad v. State of Gujarat & Ors.., XLI (3) GLR 2696 wherein it has been observed in paragraph 9 as under:

" ....

The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material alongwith the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August, 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August, 1999 the detention order has been passed.

...."

6. Now, in the instant case also, considering the fact that the detaining authority could not have been in a position to go through the bail order passed by the competent authority, especially when, there is a bunch of more than 200 papers, it can safely be presumed that the detaining authority has not applied his mind to the papers placed before him and has passed the impugned order of detention on the very next day i.e. on 28th April,2002.

7. In that view of the matter, I am constrained to hold that mechanical exercise of power by the detaining authority as also the supply of illegible copies of documents has vitiated the subjective satisfaction rendering the detention order invalid. Accordingly, the , the impugned order of detention deserves to be quashed and set aside.

8. On the basis of the foregoing discussion, the petition is allowed. The order of detention dated 28-4-2002 passed by the Police Commissioner,Ahmedabad City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Ramanbhai Punjabhai Tamayache Chhara is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(P.B.Majmudar,J.)

stanley-pbm.